

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MONTE L. HANEY,)	
)	
Petitioner,)	No. C 07-4682 CRB (PR)
)	
vs.)	ORDER
)	
DERRAL G. ADAMS, Warden,)	(Doc # 9)
)	
Respondent.)	

Petitioner has filed a motion to amend his petition for a writ of habeas corpus under 28 U.S.C. § 2254 to add an additional claim of sentencing error. He argues that the claim "'relates back' to the matters set forth in the original petition." Even if the claim relates back, the motion (doc # 9) must be DENIED because the claim is not exhausted. Petitioner must give the Supreme Court of California a fair opportunity to rule on the claim before he can proceed with it in federal habeas. See O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999).

Under the circumstances of this case, petitioner must be afforded the option of either withdrawing his unexhausted claim and proceeding only on his exhausted claims in the original petition, or of dismissing the original petition and returning to federal court with a new petition once all claims are exhausted. See Jefferson v. Budge, 419 F.3d 1013, 1016 (9th Cir. 2005); Olvera v. Giurbino, 371 F.3d 569, 573 (9th Cir. 2004).

1 By no later than May 16, 2008, petitioner shall inform the court in writing
2 whether he wishes to (1) withdraw his unexhausted claim and proceed only on
3 his exhausted claims in the original petition, or (2) dismiss his original petition
4 and return to federal court with a new petition containing all claims once they are
5 exhausted.¹ Failure to respond within the designated time will result in the
6 dismissal of the original petition without prejudice to filing a new federal petition
7 containing only exhausted claims.

8 SO ORDERED.

9 DATED: May 5, 2008


10 CHARLES R. BREYER
11 United States District Judge
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25 ¹Petitioner may be able to seek a stay of these proceedings if he can show
26 that there was good cause for his failure to exhaust his unexhausted claims in
27 state court, and that the claims are potentially meritorious. See Rhines v.
28 Webber, 544 U.S. 269, 277 (2005).